IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 181 OF 2006
IN
WRIT PETITION NO. 56 OF 2006

Shri Vasai Gujrati Education
Society and anr. ..Petitioners

Vs.

Smt. Lataben Dilipbhai Desai
and ors. ..Respondents

Mr. R.S. Apte i/by Mr. N.R. Bubna for petitioners.
Mr.Dhananjay i/by M.V. Vashi for respondent no.1.
Mr. R.D. Rane, Government Pleader for respondent nos.2 and 3.

CORAM: B.H. MARLAPALLE & J.H. BHATIA,JJ.

Date : January 18, 2007.

P.C.:

1. Writ Petition No.56 of 2006 was partly allowed by us vide our order dated 6/11/2006. The prayer for extending the pensionery benefits was not considered but on the statement made by the learned counsel for the original petitioner that the termination order which was challenged in Writ Petition No.3977 of 1996 was stayed and the said stay order continued till the petitioner had attained the age of superannuation i.e. upto 30/9/2001, we held that the petitioner would be

entitled for payment of salary till the age of superannuation. Consequently, the respondent-management was directed to pay the petitioner's monthly salary till she attained the age of superannuation on 30/9/2001, if the same was not paid earlier.

2. This review petition has been filed pointing out that the statement made by the learned counsel for the original petitioner regarding stay to the termination order in Writ Petition No.3977 of 1996 was far from facts and reliance in this regard has been placed on the order passed on 17/9/2002 by which Writ Petition No.3977 of 1996 and Civil Application No.579 of 2002 filed in the said petition came to be disposed off. Mr. Apte the learned counsel for the management has also invited our attention to ad-interim relief granted in Writ Petition No.3977 of 1996 on 5/8/1996 and the said order reads as under:-

> "Shri. Rane, Addl. Govt. Pleader for respondent Nos.1 and 2. Issue notices before admission to respondent nos.3 and 4,

returnable on 16th of August, 1996. Hamdast is permitted. Pending further orders there will be an ad-interim order in terms of prayer clause (d)."

. The prayer clause (d) in Writ Petition No.3977 of 1996 reads thus:-

"(d) That pending the hearing and final disposal of the petition, the respondents, their servants, agents, committee members and office bearers be restrained by an order and injunction of this Hon’ble Court to start the recovery proceedings of the salary from 1973 to 13-7-96 and/or from deducting the said amount from her Provident Fund, pension or any other dues payable to the petitioner."

. Thus, the ad-interim order was only in regard to the injunction against the management from effecting deductions from the salary and there was no

stay to the order of termination. The same is also obvious from the order dated 17/9/2002 passed by this court disposing Writ Petition No.3977 of 1996.

3. In the premises, this review petition succeeds and the same is hereby allowed. The Judgment and Order dated 6/11/2006 partly allowing the Writ Petition No. 56 of 2006 is hereby recalled. We are satisfied that the original petitioner, not being in service, would not be entitled for salary till she attained the age of superannuation on 30/9/2001. Hence, Writ Petition No.56 of 2006 fails in toto and the same is hereby dismissed.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**